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December 1, 1997

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VIA HAND DELIVERY

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

Re: MM Docket No. 97-182

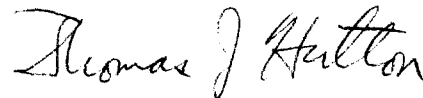
Reply Comments of Newsweb Corporation

Dear Ms. Salas:

Submitted on behalf of Newsweb Corporation are an original and four copies of the Reply Comments of Newsweb Corporation in MM Docket No. 97-182.

Very truly yours,

HOLLAND & KNIGHT LLP



Thomas J. Hutton

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Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

RECEIVED  
DEC 1 - 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Preemption of State and Local Zoning )  
and Land Use Restrictions on the Siting, )  
Placement and Construction of Broadcast )  
Station Transmission Facilities )

MM Docket No. 97-182

To: The Commission

**REPLY COMMENTS OF NEWSWEB CORPORATION**

Newsweb Corporation ("Newsweb"), the corporate parent company of the former permittee of KTVJ(TV), Channel 14, Boulder, Colorado, files the following reply comments in support of the rules proposed by the NAB and MSTV for limited preemption of state and local authority on the siting and placement of FM and television transmission facilities. The ten year battle and ultimate failure of Newsweb to obtain local zoning approval to locate KTVJ's proposed transmission facilities on property an affiliate of Newsweb had purchased at the Lookout Mountain antenna farm located in Jefferson County, Colorado, perfectly illustrates how a local government, subject to local political pressures, can ignore safeguards adopted by the Commission and frustrate the provision of local television service.

## **A. Background**

Newsweb's former subsidiary, Boulder Telecasting Corporation ("BTC"), was issued a construction permit on October 4, 1982 which, because it was for a channel 14 operation, contained a condition requiring equipment testing and a showing that no objectionable interference to existing land mobile operations would be caused before operation could commence.<sup>1</sup> BTC proposed to locate on Lookout Mountain, the antenna farm from which the other Denver market television stations were broadcasting. An affiliate of BTC purchased 30.21 acres of land on Lookout Mountain for its proposed tower. BTC's first request for a special use permit was opposed by residents in the general neighborhood of the antenna farm and Coors, Martin Marietta (two of the area's largest employers), the Division of Telecommunications of the State of Colorado and other land mobile licensees. Faced with the local pressure, the Jefferson County Board of Commissioners ("Board") denied the request in June of 1985. The denial was based upon the finding that

(1) interference problems with public tele-communications had not been resolved, (2) additional negative visual impact to residents and visitors would be created, (3) the lack of guarantees that any existing towers would be removed or that consolidation of multiple users upon the tower would occur, and (4) negative impact of increased radio frequency energy on the surrounding residential neighborhood.

*Mountain Contours Corporation v. Board of County Commissioners of Jefferson*, Case No. 85CV2245, Division 1, District Court County of Jefferson, Colorado, December 1,

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<sup>1</sup>

The condition was imposed pursuant to a 1982 directive requiring new or modified TV Channel 14 or 69 construction permits be subject to a condition requiring the applicant to take adequate measures to protect against objectionable land mobile interference prior to commencement of operations under program test authority. *Public Notice*, Mimeo No. 2526, March 1, 1992.

1987. The denial was upheld two years later on appeal to the Jefferson County District Court. *Id.*

In lieu of further appealing the District Court's decision, a radically restructured land use proposal was placed before the Board. The proposal was crafted specifically at the behest of the Jefferson County Planning Staff. BTC's revised proposal was the subject of at least 25 meetings with the Planning Staff and seven joint meetings with members of various citizen's groups and the Planning Staff. BTC participated in 19 public hearings before the Board and spent over \$500,000 in developing and processing its revised tower proposal. Despite BTC's intense efforts to address the concerns of all interested parties, on July 10, 1990, the Board denied the revised proposal. In doing so, the Board made a number of findings, including the following:

[T]he tower has not been located to prevent interference to law enforcement and other land mobile radio providers on Lookout Mountain. Therefore, the proposal endangers the safety of residents of Jefferson County; [and] it is incompatible with existing telecommunications uses on Lookout Mountain . . . .<sup>2</sup>

BTC then appealed the Board's decision to the Jefferson County District Court. In the appeal, BTC alleged that the Board exceeded its jurisdiction on the interference issue, because interference questions are preempted by federal law. BTC prevailed on that issue, but ultimately failed, after pursuing its litigation in the District Court and Colorado appellate courts, to overturn the Board's denial of zoning approval for BTC's proposed tower on Lookout Mountain. This phase of the litigation lasted from 1990-93 and consumed hundreds of thousands of dollars in legal fees and related costs.

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<sup>2</sup>

Resolution No. CC90-592, Board of County Commissioners of the County of Jefferson, State of Colorado, July 10, 1990, p. 2.

By late 1993, BTC concluded that it would never be able to receive approval for a new television tower for Channel 14 on Lookout Mountain. BTC accordingly entered into an agreement in December of 1993 to assign the construction permit to another party, abandoning BTC's effort to obtain approval for the proposed tower on Lookout Mountain.

### **B. The Proposed Rules are Needed**

Jefferson County submitted comments in this proceeding claiming that "evidence of delays is anecdotal only."<sup>3</sup> Jefferson County, referring to the Channel 14 proposal, states that review in that case "took many months" because there were many revisions and there were concerns about interference. In fact, the zoning process consumed many years, not months. The revisions cited by Jefferson County were adopted as part of BTC's effort to address objections and receive the Board's approval. As for interference, it never should have been a zoning issue at all. Not only did the Commission specifically address and resolve the issue of potential interference to land mobile operations in granting the KTVJ construction permit, but federal law clearly holds that the Commission is the sole arbiter of electronic interference issues arising out of the operations of its licensees. Jefferson County's Comments are astonishing insofar as they suggest that Jefferson County still claims a role in reviewing claims of electronic interference. Indeed, Jefferson County's Comments and its actions in the Channel 14 case provide an excellent example of the willingness of local zoning

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<sup>3</sup>

Comments of the County of Jefferson, State of Colorado ("Comments") at 10.

authorities to venture far into the exclusive domain of the Commission. That is why the proposed rules are needed.

Recently it has become clear that there will be opposition to development of any DTV operations on Lookout Mountain due to concern over RF radiation. Attached as Exhibit 1 is a copy of a November 17, 1997 article in USA Today entitled "Grass-roots opposition takes seed in Colorado." The article points out that Denver, a top-thirty market, is supposed to be one of the first markets for commencement of DTV operations. The article describes the concerns of local residents as to RF radiation from existing NTSC and potential DTV television operations on Lookout Mountain and states that County Commissioner Michelle Lawrence is "in the middle of the brewing tower dispute." Clearly, the Jefferson County Board is going to face a lot of pressure not to approve any DTV proposals for Lookout Mountain. The proposed rules do not eliminate Jefferson County's role in the review process, as Jefferson County and others have suggested. Rather, the proposed rules adopt important procedural protections for tower proponents and prevent local governments from denying towers on certain grounds that are within the FCC's sole jurisdiction, including review of RF radiation hazards.

### **C. Conclusion**

Unless the proposed rules are adopted, zoning authorities in Denver and other markets will frustrate the objectives of Congress and the FCC by unduly delaying

implementation of DTV operations and intruding into areas within the FCC's sole jurisdiction. Newsweb accordingly supports the proposed rules.

NEWSWEB CORPORATION

By: Thomas J. Hutton  
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December 1, 1997

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14E

New technology  
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Technology

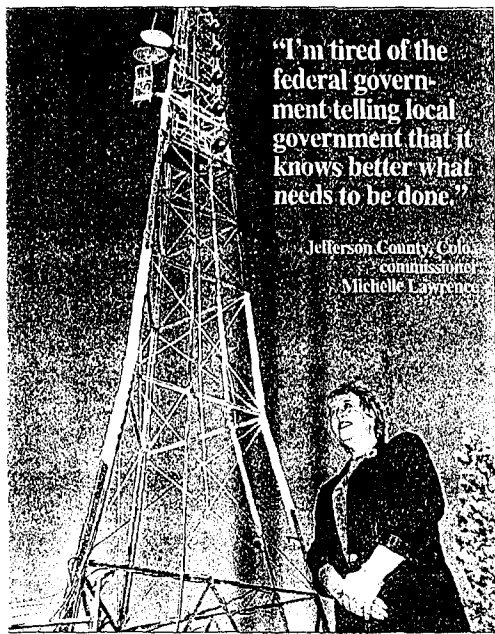
MONDAY, NOVEMBER 17, 1997

Meet the man  
who put digital  
into HDTV

21E

Dissecting  
the experience  
of television

23E



**"I'm tired of the federal government telling local government that it knows better what needs to be done."**

Jefferson County Commissioner  
Michelle Lawrence

The local government perspective: Lawrence stands on Lookout Mountain in Golden, Colo., which is dotted with communications towers. Major TV stations are interested in the site for digital TV transmission, enmeshing county officials in a growing controversy involving area residents.

## Grass-roots opposition takes seed in Colorado

In metropolitan Denver, the conflict between digital advocates and grass-roots opponents of tower projects is playing out even before the major TV stations there have given a firm indication of their intentions.

Since sprouting its first TV tower in the early 1950s, Lookout Mountain, a Front Range peak that looms over the city and its suburbs, has become home to dozens of broadcast towers of all sorts clustered in three "tower farms."

In a letter sent last May by a lawyer for the four network affiliates in Denver, the Jefferson County Board of Commissioners was told that the stations consider Lookout Mountain "significantly superior" to lesser developed mountaintops nearby as a site for new towers. (One of the four network stations, KUSA-TV, is owned by Gannett, publisher of USA TODAY.)

Jim MacDermott, a consultant working with the four network affiliates and some smaller Denver stations, declined to say whether the local broadcasting industry is interested in Lookout Mountain or another site for its towers.

Being in a top 30 market, Denver broadcasters face a November 1999 Federal Communications Commission deadline for transmitting a digital signal.

MacDermott says the stations, which are working together on digital implementation, should have a tower plan ready to make public early next year.

Asked if the stations may be waiting for implementation of the FCC rule pre-empting local zoning authorities, MacDermott said: "It's not a card we want to play, but neither is it a card we would



Carole Lomond: Local resident is concerned about the health impact of more towers.

throw out of the deck."

The mere possibility of additional tower development on Lookout Mountain has mobilized homeowners on the mountainside.

"They're ready to picket," says Carole Lomond, who owns one of the 350 or so stylish homes within a mile of Lookout Mountain tower farms.

The neighbors' opposition is based mainly on concern over the possible ill effects of adding electronic transmission power to what Lomond says is already "an extremely complex electromagnetic environment."

"This isn't about what it looks like," Lomond says of neighbors' opposition to additional towers and equipment.

"I don't want any more (transmitting equipment) until I know proof-positive that it won't be harmful to my children or to my life."

Public concerns about cancer and other potential ill effects from electronic transmissions are overblown, says Art Allison, senior engineer for the National Association of Broadcasters.

"If you stand right in front of a radio antenna, you'll get cooked," Allison says. "But you're not supposed to stand there. With the proper installation and maintenance of these facilities, there should not be a public safety issue."

Jefferson County Commissioner Michelle Lawrence is in the middle of the brewing tower dispute. Although the major Denver stations have yet to make a proposal to the board, tower zoning has already landed on her lap in the form of a request by Bear Creek Development to permit construction of a tower on sparsely developed Mount Morrison, which is a few miles south of Lookout.

Bear Creek officials expect to mount the digital equipment of smaller non-affiliate stations on the proposed tower. They've also tried to interest network affiliates in their site, with no luck so far.

"They won't even return our phone calls," says Kathryn Isenberger, a development company officer.

The board of commissioners is frustrated by the technical and political complexity of the tower issues, Lawrence says, and is hiring a consultant to clarify technical issues.

Some board members are angered by the refusal of the affiliates to give a clear indication of their intentions.

But worse than those frustrations, Lawrence says, is the idea that the FCC is considering the possibility of undercutting county government on what to her is a purely local government issue.

"I'm tired of the federal government telling local governments that it knows better what needs to be done," Lawrence says. "Our citizens don't agree with that, and we don't either."

By Thomas A. Fogarty